

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1312 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

M A KATHI, JR ASSTT EXAMINER

Versus

STATE OF GUJARAT

Appearance:

MR BP TANNA for Petitioner

Mrs.S.D.Talati, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 13/01/98

ORAL JUDGEMENT

1. The petitioner, an officer in Gujarat Account Service Class II, prays that he is entitled to be promoted with effect from the date his juniors were promoted i.e. from 14.12.1983.

2. It is pointed out by the respondents that as the petitioner was facing a departmental inquiry, his case

was considered by the Departmental Promotion Committee by following the procedure of "sealed cover", and after the result of the departmental inquiry, the sealed cover was opened and the Departmental Promotion Committee had found him not fit for promotion and, therefore, his grievance does not survive.

3. However, again in 1985, the Departmental Promotion Committee had considered his case for promotion and he has been refused promotion on the ground that in the departmental inquiry, the allegations were proved and punishment of stoppage of increments of two years with cumulative effect was passed.

4. The departmental proceedings and punishment were the subject matter of Special Civil Application No. 3068 of 1986 wherein the High Court held that the petitioner was charged with the misconduct of drawing honorarium twice for setting papers for departmental examination and it was charged that he had misappropriated Government money. The Gujarat Services Tribunal came to the conclusion that there was no misappropriation and, therefore, that charge was not held to be proved, but the Services Tribunal held that it was a case of gross negligence and, therefore, the punishment was reduced to stoppage of increment for one year without future effect. The High Court allowed the petition holding that there was no charge of negligence and the Services Tribunal could not have given finding on such a new charge and, therefore, the petition was allowed and the punishment was quashed and set aside.

5. In that view of the matter, the authority has to consider afresh the petitioner's case for promotion in 1986 on the basis that there is no punishment. The petitioner has thereafter retired. Therefore, the respondents shall have to notionally work out the benefits.

6. In the result, the petition is partly allowed and the respondent authorities are directed to see that the petitioner's case for promotion is considered afresh notionally from 1985 onwards whenever occasion for promotion had arisen while the petitioner was in service and if the Departmental Promotion Committee finds that he was entitled to be promoted on exclusion of the punishment from consideration, he shall be given all benefits accordingly.
